

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 17-cr-664-JBW-RER  
:   
- versus - : U.S. Courthouse  
: Brooklyn, New York  
:   
RICHARD LUTHMANN, : March 18, 2019  
:   
Defendant. : 4:13 PM  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR A GUILTY PLEA  
BEFORE THE HONORABLE RAMON E. REYES, JR.  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

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1 THE CLERK: Criminal cause for entry of plea  
2 before the Honorable Ramon E. Reyes, Jr.; USA v Richard  
3 Luthmann, 17-cr-664-1.

4 Counsel for plaintiff, please state your name  
5 for the record.

6 MS. PENZA: Lawyer Kim Penza, for the United  
7 States. Good afternoon, your Honor.

8 THE COURT: Good afternoon.

9 THE CLERK: Counsel for defendant, please state  
10 your name for the record.

11 MR. AIDALA: Arthur Aidala. Good afternoon,  
12 your Honor.

13 THE COURT: Good afternoon.

14 MR. ROMANO: Mario Romano, for Mr. Luthmann.  
15 Good afternoon.

16 THE COURT: Good afternoon.

17 Mr. Luthmann, I am advised by your attorney  
18 that you wish to plead guilty to counts one and nine of  
19 the indictment that's been filed against you; is that  
20 correct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: This is a serious decision that  
23 you'll have to make, and I will have to make sure that  
24 you understand all of your rights and also the  
25 consequences of your guilty plea. To do that, I will

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1 have to ask you some questions, and your answers to my  
2 questions must be made under oath. So if you'd stand up  
3 and raise your right hand, I will swear you in.

4 R I C H A R D L U T H M A N N,

5 called as a witness, having been first duly sworn,  
6 was examined and testified as follows:

7 THE COURT: Mr. Luthmann, you understand that  
8 having been sworn, your answers to my questions will be  
9 subject to the penalties of perjury or making a false  
10 statement, if you do not answer truthfully?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: That means that if you answer  
13 falsely to any of my questions, the government may  
14 prosecute you for perjury or making a false statement and  
15 may use any of your false statements made today during  
16 that prosecution.

17 Do you understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: As I know you're aware, this is  
20 Judge Weinstein's case. He's the judge who will sentence  
21 you and make the ultimate decision as to whether to  
22 accept your guilty plea.

23 If you wish, you have the absolute right to  
24 plead guilty in front of him, and there will be no  
25 prejudice to you. Alternatively, if you wish, I will

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1 listen to your plea this afternoon, and then a transcript  
2 of this proceeding will be made by the court reporter,  
3 and Judge Weinstein will review the transcript in  
4 connection with your sentence.

5 Do you understand?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you wish to give up your right  
8 to plead guilty directly in front of Judge Weinstein and  
9 instead proceed this afternoon in front of me?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Are you making this decision  
12 voluntarily and of your own free will?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Has anyone threatened you or have  
15 any promises been made to you to induce you to plead  
16 guilty in front of me, as opposed to pleading guilty in  
17 front of Judge Weinstein?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: In connection with that, I have  
20 been given the consent form that permits me to listen to  
21 your plea. It has a number of signatures on it, one of  
22 which is next to my finger here.

23 Is that your signature?

24 THE DEFENDANT: I believe so, yes.

25 THE COURT: Okay. I probably couldn't see it

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1 from that distance either.

2 As I said, Mr. Luthmann, before listening to  
3 your plea there are a number of questions that I have to  
4 ask you to make sure that your plea is valid. If you  
5 don't understand any of my questions or if you don't  
6 understand anything else that I'm explaining to you this  
7 afternoon, please let me know, okay.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: What is your full name?

10 THE DEFENDANT: Richard Albert Luthmann.

11 THE COURT: How old are you?

12 THE DEFENDANT: Thirty-nine years old.

13 THE COURT: What schooling or education have  
14 you had?

15 THE DEFENDANT: I'm a graduate of Columbia  
16 University, New York Law School, and the University of  
17 Miami.

18 THE COURT: Are you under the care of a doctor  
19 or psychiatrist for any reason?

20 THE DEFENDANT: Yes, it would be the MDC  
21 Medical at this point.

22 THE COURT: What are you being treated for?

23 THE DEFENDANT: Bipolar disorder.

24 THE COURT: Are you taking medication for that?

25 THE DEFENDANT: Yes, I am.

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1 THE COURT: What medication do you take?

2 THE DEFENDANT: I don't have the full list in  
3 front of me, but I take doses of medication daily that  
4 they give me.

5 THE COURT: Other than the bipolar disorder,  
6 have you been diagnosed with any psychiatric or mental  
7 health illness?

8 THE DEFENDANT: High anxiety.

9 THE COURT: Do you take medication for that as  
10 well?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right. These medications that  
13 you're taking for these conditions, do they interfere  
14 with your ability to comprehend what's going on and to  
15 understand what it is we're doing this afternoon?

16 THE DEFENDANT: No, they do not.

17 THE COURT: Have you ever been hospitalized or  
18 treated for drug addiction, alcoholism, or mental or  
19 emotional problems?

20 THE DEFENDANT: Yes.

21 THE COURT: Tell me about that.

22 THE DEFENDANT: In or about April of last year,  
23 I went to the Richmond University Medical Center  
24 Emergency Room, Psychiatric Emergency Room, and I was  
25 thereafter admitted. That's where they diagnosed me with

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1 bipolar disorder.

2 THE COURT: Other than that, have there been  
3 any hospitalizations for any mental health issues,  
4 alcoholism, drug abuse?

5 THE DEFENDANT: Well, I was sent to FMC Devens  
6 for a psychiatric study and evaluation by  
7 Judge Weinstein.

8 THE COURT: I've read the report that was done,  
9 that study.

10 Other than the medication that you told me  
11 about already, in the past 24 hours have you taken any  
12 medicines, pills, or drunk an alcoholic beverages, or  
13 taken any narcotics?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Is your mind clear right now?

16 THE DEFENDANT: Yes. Yes, it is.

17 THE COURT: You understand what's going on?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Mr. Luthmann, as a defendant in a  
20 criminal case, you have the right to be represented by an  
21 attorney at every stage of the proceedings. You have  
22 chosen to retain Mr. Aidala to represent you in this  
23 case. If at any point in time you need to talk to him  
24 about what we're discussing, let me know. I'll let you  
25 go back inside and have a private place to speak with

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1 him. Okay?

2 THE DEFENDANT: Yes, thank you.

3 THE COURT: All right. And going forward, if  
4 at some point in time -- you're going to be sentenced by  
5 Judge Weinstein eventually, but if you go forward from  
6 today and you could no longer afford to retain counsel,  
7 you can ask the court to appoint an attorney to represent  
8 you.

9 Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Have you had any problem conferring  
12 with your attorneys concerning your case?

13 THE DEFENDANT: No, I have not.

14 THE COURT: Have you had enough time to talk  
15 with them about entering a guilty plea?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Are you fully satisfied with the  
18 representation and advice they have provided to you?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Mr. Aidala, you have discussed  
21 these matters with Mr. Luthmann?

22 MR. AIDALA: Yes, your Honor.

23 THE COURT: Are you satisfied that he  
24 understands the rights that he's giving up by pleading  
25 guilty?



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1 MR. AIDALA: Yes, your Honor.

2 THE COURT: Are you satisfied that he is  
3 capable of understanding the nature of these proceedings?

4 MR. AIDALA: Absolutely, your Honor.

5 THE COURT: Do you have any doubt at all about  
6 his competence to plead guilty at this time?

7 MR. AIDALA: Not anymore, your Honor.

8 THE COURT: Did you review the plea agreement  
9 with him?

10 MR. AIDALA: Yes, several times, Judge.

11 THE COURT: Okay. Did you discuss with him the  
12 sentencing guidelines and how those guidelines affect his  
13 case?

14 MR. AIDALA: Yes, your Honor.

15 THE COURT: Thank you.

16 Mr. Luthmann, the government has returned a  
17 multi-count indictment against you. I understand that  
18 you will be pleading guilty to counts one and nine of  
19 that indictment.

20 Count one charges you with wire fraud in or  
21 about and between August 2015 and February 2016, both  
22 dates being approximate and inclusive, within the Eastern  
23 District of New York and elsewhere, the defendants  
24 Richard Luthmann and George Padula III, together with  
25 others, did knowingly and intentionally conspire to

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1 execute a scheme, an artifice, to defraud one or more  
2 businesses, including Doe Company 1, Doe Company 2, Doe  
3 Company 3, Doe Company 4, and Doe Company 5, and to  
4 obtain money and property from them by means of  
5 materially false and fraudulent pretenses,  
6 representations and promises, and for the purpose of  
7 executing such scheme and artifice to transmit and  
8 cause to be transmitted by means of wire communication  
9 in interstate and foreign commerce, writings, signs,  
10 signals, pictures, and sounds, contrary to Title  
11 18 USC § 1343. That's the conspiracy to commit wire  
12 fraud count.

13 Count nine charges you with extortionate  
14 collection of credit conspiracy. In pertinent part, it  
15 reads: In or about and between January 2016 and December  
16 2016, both dates being approximate and inclusive, within  
17 the Eastern District of New York and elsewhere, the  
18 defendants Richard Luthmann, George Padula III, and  
19 Michael Beck, together with others, did knowingly and  
20 intentionally conspire to participate in the use of  
21 extortionate means to collect and attempt to collect one  
22 or more extensions of credit from co-conspirator one, and  
23 to punish such person for the non-repayment thereof.

24 You've received a copy of the indictment, yes?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: In order to secure a conviction  
2 against you for both counts one and nine, the government  
3 would have to convince a jury beyond a reasonable doubt  
4 of the following:

5 First, that there was, in fact, an agreement or  
6 understanding between two or more people to commit the  
7 object or purpose of the conspiracy, and here there were  
8 two, conspiracy to commit wire fraud and extortionate  
9 collection of credit; and

10 second, that you knowingly and intentionally  
11 became a member of the conspiracy.

12 The elements of the crime of wire fraud are as  
13 follows:

14 First, that there was a scheme or artifice to  
15 defraud or to obtain money or property by materially  
16 false and fraudulent pretenses representations or  
17 promises;

18 second, that you knowingly and wilfully  
19 participated in the scheme or artifice to defraud with  
20 knowledge of its fraudulent nature and with specific  
21 intent to defraud; and

22 third, that in the execution of that scheme you  
23 used or caused to be used interstate wires.

24 The elements of extortionate collection of  
25 credit are:

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1 First, that you collected or attempted to  
2 collect an extension of credit;

3 second, that you used extortionate means to  
4 collect or attempt to collect the extension of credit;  
5 and

6 third, that you participated knowingly in the  
7 use of the extortionate means.

8 The government would have to prove each of  
9 those elements beyond a reasonable doubt in order to  
10 secure a conviction against you.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: What I want to do now is go over  
14 the rights that you have and the rights that you will be  
15 giving up, if you plead guilty.

16 First of all, you have the right to plead not  
17 guilty. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: What that means is that even if you  
20 are guilty, you have a choice in this matter, and it's up  
21 to you, and you alone, to decide what to do. You may  
22 withdraw your previously entered plea of not guilty and  
23 plead guilty, as you apparently wish to do, or you may  
24 choose to go to trial simply by persisting in your not  
25 guilty plea. Do you understand?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you did plead not guilty, you  
3 would have the right under the constitution and laws of  
4 the United States to a speedy trial by a jury in public.  
5 At trial you would have the right to be represented by an  
6 attorney.

7 Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: At trial you would be presumed to  
10 be innocent. That means that you wouldn't have to prove  
11 that you're innocent. Under our legal system, it's the  
12 government that has the burden to prove beyond a  
13 reasonable doubt that you're guilty of the crimes  
14 charged. And if you had a trial and the government would  
15 fail to meet that burden of proof, the jury would have to  
16 find you not guilty.

17 Do you understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: That's why juries sometimes return  
20 verdicts of not guilty, even though the jurors believe  
21 the defendant probably committed the crime charged. When  
22 a jury returns a not guilty verdict, they're not saying  
23 they believe the defendant is innocent. They're merely  
24 saying they're not convinced beyond a reasonable doubt  
25 that he is guilty.

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1 Do you understand?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: During trial witnesses for the  
4 government would have to come into court and testify  
5 under oath in your presence. Your attorney would have  
6 the right to cross examine each witness, to object to the  
7 evidence offered by the government, and he could offer  
8 evidence on your behalf. He could also subpoena  
9 witnesses to come into court to testify on your case.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: At trial you would have the right  
13 to testify on your behalf, if you wanted to. On the  
14 other hand, you couldn't be forced to testify, if you  
15 didn't want to. Under the constitution and laws of the  
16 United States, no one can be forced to testify against  
17 himself. And if you had a trial and did not testify,  
18 Judge Weinstein would instruct the jury that they could  
19 not hold that against you.

20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: If instead of going to trial you  
23 plead guilty to the crimes charged, and if Judge  
24 Weinstein accepts your plea, you will be giving up your  
25 constitutional right to a trial and all the other rights

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1 I've just discussed. There will be no trial in this  
2 case. The court will simply enter a judgment of guilty  
3 based upon your plea.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: If you do plead guilty, I'll have  
7 to ask you questions about what you did, in order to  
8 satisfy myself and Judge Weinstein that you are guilty of  
9 the crimes charged. You're going to have to answer my  
10 questions and acknowledge your guilt, and when you do  
11 that you give up your right not to testify against  
12 yourself.

13 Do you understand?

14 THE DEFENDANT: Your Honor,

15 THE COURT: Also, if you enter a guilty plea  
16 today and you admit the criminal conduct alleged in the  
17 indictment, and if Judge Weinstein accepts your guilty  
18 plea, you will not be able to appeal to a higher court on  
19 whether you committed this crime. That will be over by  
20 your guilty plea.

21 Do you understand?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Are you willing to give up your  
24 right to a trial and the other rights I've just  
25 discussed?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: I know that you've entered into a  
3 plea agreement with the government, and I've been given  
4 the original. It's been marked as Government Exhibit 1,  
5 and I'll give it back to the AUSA after this proceeding.  
6 I have a number of questions I would like to ask you  
7 about it.

8 First of all, on the last page there are a  
9 number of signatures, again, one of which is next to my  
10 finger.

11 Is that your signature?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Luthmann, did you read this  
14 plea agreement carefully before you signed it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And you discussed it with your  
17 attorneys?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Do you believe you understand  
20 what's contained in this plea agreement?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Ms. Penza, does this plea agreement  
23 contain the entirety of any understanding the US  
24 Attorney's Office has with Mr. Luthmann concerning the  
25 charges?



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1 MS. PENZA: It does, your Honor.

2 THE COURT: Is that your understand as well,  
3 Mr. Aidala?

4 MR. AIDALA: Yes, Judge.

5 THE COURT: Mr. Luthmann, is there anything in  
6 the plea agreement that is not clear to you that you need  
7 me to explain further?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Other than the promises contained  
10 in the plea agreement, has anyone made any other promises  
11 that are causing you to plead guilty?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: I would like to go over a few  
14 things in the plea agreement with you now starting with  
15 the penalties for the crimes to which may plead guilty.

16 The wire fraud conspiracy charge carries a  
17 maximum term of imprisonment of twenty years, a minimum  
18 term of imprisonment of zero years, a minimum term of  
19 supervised release of three years to follow any term of  
20 imprisonment. And if you violate a condition of your  
21 release, you could be sentenced to up to two years in  
22 prison without credit for any time you previously spent  
23 in prison or previously spent on supervised release.  
24 There is a maximum fine of \$250,000; mandatory  
25 restitution in the full amount of each victims' losses,

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1 as determined by the court; \$100 special assessment; and  
2 criminal forfeiture as set forth in the plea agreement  
3 paragraphs 6 through 13.

4           The extortionate extension of credit conspiracy  
5 charge carries a maximum term of imprisonment of twenty  
6 years, a minimum term of imprisonment of zero years; a  
7 maximum term of supervised release of three years to  
8 follow any term of imprisonment. Again, if a term is  
9 violated you could be sentenced to up to two years  
10 without credit for time you spent in prison previously or  
11 time you previously spent on supervised release. There  
12 is also a maximum fine of \$250,000; mandatory restitution  
13 in the full amount of each victims' losses as determined  
14 by the court; a \$100 special assessment.

15           Do you understand that, Mr. Luthmann?

16           THE DEFENDANT: Yes, your Honor.

17           THE COURT: Now, in order to determine  
18 your sentence, the actual sentence to give you,  
19 Judge Weinstein will have to conduct a sentencing  
20 analysis. The first step is for him to consider  
21 the sentencing guidelines that are issued by the  
22 United States Sentencing Commission. Those guidelines  
23 are advisory. They're not mandatory, but they're an  
24 important consideration in the sentencing, and district  
25 judges look to them as a factor in determining what a

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1 reasonable sentence is in a criminal case and what  
2 sentence to give you.

3 Mr. Aidala told me that he discussed the  
4 sentencing guidelines with you and how they affect your  
5 case; did he do that?

6 THE DEFENDANT: Yes. Yes, your Honor.

7 THE COURT: The second step is for  
8 Judge Weinstein to determine whether there are any  
9 factors present that would allow him to depart from the  
10 sentencing guidelines, either upwardly or downwardly, and  
11 he also has to the consider the factors set forth in  
12 18 USC § 3553(a) against all of the facts and  
13 circumstances of your case, and it may be that is what is  
14 a called a "non-guidelines sentence" may be appropriate.

15 The bottom line is that until your sentencing  
16 date, you won't know with any certainty what the  
17 guidelines will be, whether there will be grounds to  
18 depart from them or whether Judge Weinstein will impose a  
19 non-guidelines sentence.

20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Judge Weinstein has not set a  
23 sentencing date, has he?

24 MS. PENZA: Actually, he may have. Let me see.

25 THE COURT: You're probably not going to get

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1 cell service in here.

2 MS. PENZA: You're probably right, your Honor.

3 THE COURT: Okay.

4 MS. PENZA: I don't have my notes with me from  
5 the last status conference before Judge Weinstein. I  
6 thought perhaps he did.

7 THE COURT: Give me one minute, please.

8 MS. PENZA: I'm correcting myself. I actually  
9 now remember that he did not because we discussed that I  
10 might be on trial and figuring out when that might be.

11 THE COURT: Okay. So Judge Weinstein at some  
12 point will set a sentencing date, Mr. Luthmann. Prior  
13 to that sentencing hearing, he will receive a pre-  
14 sentence report from the probation department, which will  
15 have facts in it about you and the crime to which you  
16 pled guilty, and it will also have a recommendation on  
17 what the sentencing guidelines call for in your case.  
18 Your attorneys will have the opportunity to review the  
19 pre-sentence report in consultation with you and to  
20 challenge anything contained in it. They can also argue  
21 to Judge Weinstein what the sentencing guidelines should  
22 be for your case.

23 Although there's uncertainty, as we sit here  
24 today, about what the guidelines ultimately will be, it's  
25 important for you to know what the possible guidelines

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1 calculations are.

2 And I know that if you reviewed the plea  
3 agreement, you see at least what the government estimates  
4 at this point in time and what the guidelines provide,  
5 but I need to inform you of that in any event.

6 The base offense level for the wire fraud  
7 conspiracy according to the plea agreement is seven.  
8 There is a 14-point enhancement for the loss amount, a  
9 two-point enhancement for use of sophisticated means, and  
10 a two-point enhancement for the abuse of trust leading to  
11 an adjusted offense level of 25.

12 MS. PENZA: There is a typographical error that  
13 I did --

14 THE COURT: Yes, that's what I was looking at.  
15 After that count one guideline calculation, there was  
16 another guideline calculation for the count nine, but it  
17 says, "count seven." So I'm going to change "seven" to  
18 "nine," and when we're done everyone initial it.

19 MS. PENZA: Thank you, your Honor.

20 THE COURT: Okay. So for the extortionate  
21 collection of credit conspiracy, the base offense level  
22 is 20, a four-point enhancement for the use of a  
23 dangerous weapon, resulting in an adjusted offense level  
24 of 24.

25 Since there are multiple counts that you will

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1 be pleading guilty to, there is a multi-count analysis  
2 that's done. Once that is done, the highest offense  
3 level is a 25. There is a two-point enhancement for an  
4 increase in offense level and a two-point enhancement for  
5 obstruction of justice, resulting in a total offense  
6 level of 29.

7           Given your guilty plea today and your  
8 acceptance of responsibility through your allocution and  
9 all the way through your sentence, you would be entitled  
10 to an additional three points of a reduction, resulting  
11 in a 26 total offense level. If you are in criminal  
12 history category one, that results in a range of  
13 imprisonment of 63 to 78 months.

14           Do you understand that?

15           THE DEFENDANT: Yes, your Honor.

16           THE COURT: Okay. Actually, you have  
17 stipulated to this guideline calculation in the plea  
18 agreement, including all the adjustments that were  
19 discussed.

20           If Judge Weinstein sentences you to a term of  
21 imprisonment of 87 months or less, you have agreed not to  
22 challenge your conviction or your sentence by way of an  
23 appeal or a petition pursuant to 28 USC § 2255 or  
24 otherwise.

25           Do you understand?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Okay. I'd be remiss if I didn't  
3 mention that you have agreed to the criminal forfeiture  
4 in paragraphs 6 through 13, the total amount of that is a  
5 \$130,000, if I'm not mistaken, paid at an amount of five  
6 percent of your net annual income until fully paid.

7 Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Two things I have to mention.  
10 We've gone through the guideline calculation in the plea  
11 agreement and you have stipulated to that. That is not  
12 binding on Judge Weinstein. He has to make his own  
13 determination as to what the guidelines provide in this  
14 case, and he has the authority under the law to sentence  
15 you to a term of imprisonment that is more severe or less  
16 severe than the guidelines. Ultimately, it is up to him.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Lastly, whatever sentence you do  
20 receive from Judge Weinstein will be very close to the  
21 actual amount of time you spend in prison because you  
22 won't be able to write to a parole board or parole  
23 commission to let you out early because in our federal  
24 system, there is no such thing.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Mr. Luthmann, do you have any  
3 questions at this point that you want to ask me about  
4 anything related to your case that might not be clear to  
5 you?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Are you ready to plead?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: Mr. Aidala, do you know of any  
10 reason why Mr. Luthmann should not enter a guilty plea?

11 MR. AIDALA: No, sir.

12 THE COURT: Are you aware of any legal defense  
13 to the charges?

14 MR. AIDALA: I do not, your Honor.

15 THE COURT: Ms. Penza, before I hear  
16 Mr. Luthmann's plea and allocution, is there anything  
17 that I either did not inform him that I am supposed to or  
18 that you would like me to instruct him on?

19 MS. PENZA: No, thank you, your Honor.

20 THE COURT: Okay. Mr. Luthmann, how do you  
21 plead to count one of the indictment, guilty or not  
22 guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: How do you plead to count nine of  
25 the indictment, guilty or not guilty?



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1 THE DEFENDANT: Guilty.

2 THE COURT: Mr. Luthmann, are you making these  
3 guilty pleas voluntarily and of your own free will?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: Has anyone threatened, forced, or  
6 pressured you to plead guilty?

7 THE DEFENDANT: No, they have not.

8 THE COURT: Other than the promises in the plea  
9 agreement, has anyone made any other promises that are  
10 causing you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Has anyone promised you what  
13 sentence you will receive from Judge Weinstein, if you  
14 plead guilty?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Why don't you tell me in your own  
17 words why you're guilty of these crimes.

18 THE DEFENDANT: In or about and between August  
19 2015 and February 2016, both dates being approximate and  
20 inclusive within the Eastern District of New York and  
21 elsewhere, I, together with others, did knowingly and  
22 intentionally conspire to execute a scheme and artifice  
23 to defraud one or more businesses, including five Doe  
24 companies to obtain money and property from them by means  
25 of materially false and fraudulent pretenses,

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1 representations and promises for the purpose of executing  
2 such scheme and artifice to transmit and cause to be  
3 transmitted by means of wire communication and interstate  
4 and foreign commerce writings, signs, signals, pictures,  
5 and sounds contrary to Title 18 USC § 1343.

6 And then in or about January 2016 and  
7 December 2016, both dates being approximate and inclusive  
8 within the Eastern District of New York and elsewhere,  
9 I, together with others, did knowingly and intentionally  
10 conspire to participate in the use of extortionate  
11 means to collect and attempt to collect one or more  
12 extensions of credit from co-conspirator one and to  
13 punish such person for the non-payment thereof, Title 18  
14 USC § 894(c).

15 THE COURT: Ms. Penza?

16 MS. PENZA: Your Honor, he is stipulating that  
17 he has committed all of the elements of the statute in  
18 terms of a factual basis for the plea. I think the  
19 defendant should concede what the actual facts are, so  
20 that the court may be satisfied that there is a factual  
21 basis for the plea.

22 THE COURT: I agree. Other than reading the  
23 statute back to me, Mr. Luthmann, can you tell me in  
24 plain English why you're guilty, what you did?

25 THE DEFENDANT: Okay. I was representing a

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1 company that was ripping off Chinese people and Chinese  
2 companies in the scrap metal business. That's the first  
3 count.

4 And the second count, one of the individuals  
5 that was in that company had a dispute with the other  
6 individuals and there was a situation and an encounter.  
7 I wasn't at the actual encounter, but it was an encounter  
8 where a firearm was brandished and the individual was  
9 threatened.

10 THE COURT: The individual, I guess that's  
11 co-conspirator number one.

12 THE DEFENDANT: Yes.

13 THE COURT: He was part of the scrap metal  
14 fraud?

15 THE DEFENDANT: Yes.

16 THE COURT: The threatening of him was in  
17 relation to what?

18 THE DEFENDANT: It was a business debt. I  
19 believe it was a business debt that was owed between  
20 conspirator one and one of the other co-defendants.

21 THE COURT: You had knowledge of this before it  
22 happened?

23 THE DEFENDANT: Yes.

24 THE COURT: And you participated in it?

25 THE DEFENDANT: I wasn't physically --

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1 THE COURT: You participated in the --

2 THE DEFENDANT: I participated in the  
3 conspiracy to collect the credit.

4 THE COURT: So you agreed to be part of that  
5 conspiracy?

6 THE DEFENDANT: I agreed to be part of the  
7 meeting between the individuals. At that meeting, which  
8 I never actually arrived at, a gun was brandished, what  
9 appeared to be a gun was brandished. I wasn't there, so  
10 I don't know.

11 THE COURT: Ms. Penza, do you think that's  
12 enough?

13 MS. PENZA: Your Honor, I would ask that as  
14 to the wire fraud conspiracy that the defendant stipulate  
15 that as part of the conspiracy, he and/or other  
16 co-conspirators used emails that traveled interstate to  
17 facilitate the fraud.

18 THE DEFENDANT: I will stipulate that emails  
19 were sent in furtherance of count one, the wire fraud  
20 conspiracy, that traveled interstate.

21 THE COURT: Between companies?

22 THE DEFENDANT: Between companies, yes.

23 THE COURT: I'm more concerned with the second,  
24 count nine.

25 MS. PENZA: I believe that the defendant --

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1 perhaps I can try and clarify and make sure that we are  
2 comfortable, but I would ask that the defendant stipulate  
3 that on or about the date that's alleged he was part of a  
4 conspiracy where he agreed to collect a business debt or  
5 agreed to help the other co-conspirators collect the  
6 business debt from co-conspirator one, and knowing that,  
7 that was going to -- that there was going to be force and  
8 ultimately a firearm was used as part of that.

9 THE COURT: So you weren't at this meeting,  
10 Mr. Luthmann?

11 THE DEFENDANT: No, I was not.

12 THE COURT: Okay, but you knew the meeting was  
13 going to take place?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: And you were a knowing member of  
16 the conspiracy to collect the debt?

17 THE DEFENDANT: Yes.

18 THE COURT: And you knew that when this meeting  
19 would take place, the other conspirators would use  
20 extortionate means to collect the debt from co-  
21 conspirator number one?

22 THE DEFENDANT: Yes.

23 MS. PENZA: Your Honor, perhaps -- I'm sorry.

24 THE COURT: Go ahead.

25 MS. PENZA: So, your Honor, I believe that the

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1 defendant would stipulate that the extortion occurred at  
2 Mr. Luthmann's law office, and that he knew that, that  
3 was going to occur.

4 THE COURT: Was the meeting at your law office?

5 THE DEFENDANT: It was a meeting at my law  
6 office, yes.

7 THE COURT: You see, I just have to make sure  
8 we lay out the facts that Judge Weinstein can look at and  
9 say, yes, each of the elements is satisfied. Otherwise,  
10 he cannot accept your plea.

11 Okay. With the supplementation and the  
12 colloquy, you believe it's a factually sufficient plea?

13 MS. PENZA: Yes, I do, your Honor.

14 THE COURT: Mr. Aidala, do you agree?

15 MR. AIDALA: Yes, your Honor.

16 THE COURT: I do as well. There's a factual  
17 basis for the plea. I also find that Mr. Luthmann is  
18 acting knowingly and voluntarily, that he understands the  
19 charges. He understands his rights, and he appreciates  
20 the consequences of his guilty plea.

21 It is, therefore, my recommendation to  
22 Judge Weinstein that he accept Mr. Luthmann's guilty  
23 pleas to counts one and nine.

24 Is there anything else?

25 MR. AIDALA: No, your Honor.

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1 MS. PENZA: Not from the government,  
2 your Honor. Thank you.

3 THE COURT: Thank you.

4 (Matter concluded.)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 31st day of March, 2019.

  
Rosalie Lombardi  
Transcription Plus II